IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1647 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL INSURANCE CO.LTD. & 1 - Appellant(s)
Versus
TARABEN DINESHBHAI PATEL - Defendant(s)

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Appearance :
MR KK NAIR for Appellant(s) : 1 - 2.
None for Defendant(s) : 1,
MR BK DAMANI for Defendant(s) : 1.2.1,1.2.2
MR HR PRAJAPATI for Defendant(s) : 1.2.3, 1.2.4,1.2.5

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 18/06/2007

ORAL JUDGMENT

1. The short facts of the case appears to be that

deceased Dineshchandra Vallabbhai Patel had gone to Vapi GIDC from village Kapodara on motorcycle belonging to Janakbhai Ramjibhai Patel, opponent No.1 and at about 5.45 PM, when deceased was returning on motorcycle near Valsad sugar factory, on account of rash and negligent driving of the respondent No.1, the driver lost the control over the motorcycle and it was slipped. As a result thereof, the deceased was thrown out from the motorcycle and sustained grievous injuries and died on the spot. The aforesaid incident resulted into filing of Claim Petition No. 795 of 1996 before the Tribunal for compensation of Rs.10 Lakhs. The Tribunal after adjudication, awarded the compensation of Rs.7,35,000/- together with interest @ 12% p.a. and it is under these circumstances, the present appeal before this Court.

2. Heard Mr. Nair, learned counsel for the appellant and Mr. Tarak Damani for the original claimant. Considered the Record and Proceedings of the Tribunal.

3. The contention raised on behalf of the appellant is only on the aspects of quantum of the amount of compensation awarded by the Tribunal. It has been submitted that the Tribunal has committed error in assessing the income of Rs.48,000/- per year based on the evidence of the income as per the income tax return, which was filed only for

1 yea and after the accident. It has also been submitted that the agricultural income is fully taken into consideration and so is the case for Dairy business of supplying milk. It has also been submitted that the deduction for the expense of the deceased himself is only Rs.1,000/- per month as against the settled position for deducting 1/3rd of the amount. It has been therefore submitted that the compensation awarded by the Tribunal is on much higher side and therefore, deserves to be reduced.

4. Whereas, on behalf of the orig. claimant, it has been submitted that the decease was a person having qualification of B.Sc., Agriculture. He had visited U.K. for development and establishing the business at Vapi and there was family of father, mother, and two sons and the compensation awarded is not on higher side even if the settled principles of law are considered for the purpose of awarding the compensation under the Motor Vehicles Act(hereafter 'the Act').

5. The first aspect that deserves to be examined is the reliability of the income tax return. It is true that the income tax return is filed after the accident, but in absence of any record to the contrary, it cannot be said that the Tribunal has committed error in relying upon the

income shown in the income tax return. As per the income tax return, the income of the deceased was Rs. 36,000/-, whereas the Tribunal has accepted as of Rs.35,000/-, which cannot be said as unjust or unreasonable. However, it appears that the Tribunal has not considered the prospective income of the deceased who was a qualified person and running the business. If the prospective income of the deceased is taken into consideration, then in that case, taking the base of Rs.35,000/- per year as the income, on the date of accident, the prospective income would come to Rs. 52,500/-, for the purpose of assessing the compensation.

6. It appears that the Tribunal has committed error in including the total agriculture income as well as the total income of supplying milk for the purpose of computation of income of deceased. It is true that on account of the death of the person looking after the agriculture work or looking after the dairy business, the loss is being caused due to non-availability of such person. However, such loss cannot be equated with the person earning income on account of his own contribution of work like employment, independent business, etc. When the income is derived from the property, viz. the agricultural property or may be on account of the property of cattle, for the purpose of awarding compensation, it is required for the

Tribunal to assess the loss towards supervision and the reason being that the property, may be the agriculture land or other property in the capacity as owner of the cattle continues even after the death of the deceased. In normal circumstances, towards loss of supervision, 1/3rd amount can be counted from the income derived from such property. In the present case, the Tribunal has committed error in including the total agricultural income and the total income from dairy for the purpose of awarding compensation. It did come on record that the agricultural income was Rs.10,000/- per year and from dairy, it was Rs. 15,000/- per year, total Rs.25,000/-. If 1/3rd amount is considered, it would come to Rs.8,333/- per year towards loss of supervision to the dependent members of the family on account of the death of the person who was looking after the agricultural work and the dairy work/business of the family. Therefore, the finding of the Tribunal recorded to the extent of including agricultural income as well as dairy income in toto without considering the aspects of loss of supervision deserves to be modified.

7. In view of the observations made hereinabove, if the income of the deceased is considered as Rs.52,500/-, from the business of xerox and typing centre, and Rs.8,350/-(rounded figure Rs.8,333/-), towards loss of supervision the

total income of the deceased comes to Rs.60,850/-.

8. It also appears from the record that the Tribunal has committed error in deducting Rs. 1,000/- from the total income found by the Tribunal as Rs.5,000/-. As per the settled principles of law, 1/3rd amount has to be excluded for the purpose of computing the benefit of dependency. The Tribunal has excluded only 20% of the amount instead of 1/3rd, for the purpose of computing the dependency benefit. If 1/3rd amount is excluded, 2/3rd amount would come to Rs.40,566/- per year for the purpose of computing the loss of dependency benefit.

9. Mr. Nair, learned counsel appearing for the appellant raised the contention that the deceased was at Rs. 36 years, whereas, the Tribunal has applied the multiplier of 15, which is on higher side and in his submission, the Tribunal has committed in applying multiplier of 15. In my view, the said contention deserves to be rejected for the simple reasons that as such, the multiplier provided in the Schedule in the Act of 1988 is 16 for the person above 35 years and not exceeding 40 years. However, Mr. Nair contended that the incident is of the year 1990 and the amendment in the Act of 1988 came into force in the year 1994 and therefore, no reliance may be placed by the Court upon the

Schedule which was not in the statute book at the relevant point of time.

10. It may be that the Schedule is brought to the statute book in the year 1994, but it may have the guiding effect for the purpose of awarding multiplier. Further, it hardly deserves to be recorded that the life expectancy in the country has increased on account of the development of science in the filed of nutrition as well as treatment and medical facilities. Therefore, even if the position as prevailing in the year 1990-1991 is considered, it cannot be said that the view taken by the Tribunal for applying the multiplier of 15 in case of the person who died on account of the accident aged 36 years, is unjust or unreasonable. Therefore, the said contention of Mr. Nair cannot be accepted.

11. It appears from the record and upon hearing the learned advocate appearing for both the sides that the Tribunal has committed error in awarding Rs. 15,000/- only as conventional amount towards loss of expectancy of the deceased who had a promising career, i.e., he was holding the qualification of B.Sc. Agriculture, had the substantial income and had also resources for the development and increase of the income.

12. Considering the facts and circumstances, and more particularly in view of the qualification

of the deceased, the business of the deceased and the other sources of income of agriculture as well as the dairy business, the Tribunal ought to have awarded Rs. 50,000/-. Therefore, the Judgment and Order of the Tribunal deserves to be modified to that extent.

13. In view of the aforesaid observations and discussions, the original claimant would have been entitled to the compensation of Rs. 6,08,490/- towards the loss of dependency benefit and Rs. 50,000/- towards convention amount (loss of expectancy), total Rs. 6,58,490/-. As against the same, the Tribunal has awarded Rs.7,35,000/- and therefore, the Award passed by the Tribunal for awarding the compensation of Rs.76,510/- deserves to be quashed and set aside and the award for compensation to the extent of Rs. 6,58,490/- deserves to be confirmed. Hence, ordered accordingly. So far as awarding of the interest by the Tribunal is concerned, the said part does not deserve to be interfered with and the same is confirmed.

14. In the result, the appeal is partly allowed. Decree accordingly. Considering the facts and circumstances, there shall be no order as to cost. R & P be returned to the Tribunal.

(JAYANT PATEL, J.)

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